

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

CHRISTOPHER SELLS and TIMOTHY  
MURAWSKI,

Defendants.

Case No. CV 11-04941 CW

~~PROPOSED~~ PROTECTIVE ORDER

Date Filed: October 6, 2011

Trial Date: None set.

1 1. PURPOSES AND LIMITATIONS

2 Disclosure and discovery activity in this action are likely to involve production of  
 3 confidential, proprietary, or private information for which special protection from public  
 4 disclosure and from use for any purpose other than prosecuting this litigation may be warranted.  
 5 Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated  
 6 Protective Order. The parties acknowledge that this Order does not confer blanket protections on  
 7 all disclosures or responses to discovery and that the protection it affords from public disclosure  
 8 and use extends only to the limited information or items that are entitled to confidential treatment  
 9 under the applicable legal principles. The parties further acknowledge, as set forth in Section  
 10 12.3, below, that this Stipulated Protective Order does not entitle them to file confidential  
 11 information under seal; Civil Local Rule 79-5 and General Order 62 set forth the procedures that  
 12 must be followed and the standards that will be applied when a party seeks permission from the  
 13 court to file material under seal.

14 2. DEFINITIONS

15 2.1 Challenging Party: a Party or Non-Party that challenges the designation of  
 16 information or items under this Order.

17 2.2 "CONFIDENTIAL PER P.O." Information or Items: information (regardless of  
 18 how it is generated, stored or maintained) or tangible things that qualify for protection under  
 19 Federal Rule of Civil Procedure 26(c), including information that is subject to the Health  
 20 Insurance Portability and Accountability Act ("HIPAA").

21 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as  
 22 well as their support staff).

23 2.4 Designating Party: a Party or Non-Party that designates information or items that  
 24 it produces in disclosures or in responses to discovery as "CONFIDENTIAL PER P.O."

25 2.5 Disclosure or Discovery Material: all items or information, regardless of the  
 26 medium or manner in which they are generated, stored, or maintained (including, among other  
 27 things, testimony, transcripts, and tangible things), that are produced or generated in disclosures  
 28 or responses to discovery in this matter.



1 However, the protections conferred by this Stipulation and Order do not cover the following  
 2 information: (a) any information that is in the public domain at the time of disclosure to a  
 3 Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as  
 4 a result of publication not involving a violation of this Order, including becoming part of the  
 5 public record through trial or otherwise; and (b) any information known to the Receiving Party  
 6 prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who  
 7 obtained the information lawfully and under no obligation of confidentiality to the Designating  
 8 Party. Any use of Protected Material at trial shall be governed by a separate agreement or order.

#### 9 4. DURATION

10 Even after final disposition of this litigation, the confidentiality obligations imposed by  
 11 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court  
 12 order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all  
 13 claims and defenses in this action, with or without prejudice; and (2) final judgment herein after  
 14 the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,  
 15 including the time limits for filing any motions or applications for extension of time pursuant to  
 16 applicable law.

#### 17 5. DESIGNATING PROTECTED MATERIAL

18 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party  
 19 or Non-Party that designates information or items for protection under this Order must take care  
 20 to limit any such designation to specific material that qualifies under the appropriate standards.  
 21 The Designating Party must designate for protection only those parts of material, documents,  
 22 items, or oral or written communications that qualify – so that other portions of the material,  
 23 documents, items, or communications for which protection is not warranted are not swept  
 24 unjustifiably within the ambit of this Order.

25 Mass, indiscriminate, or routinized designations are prohibited. Designations that are  
 26 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to  
 27 unnecessarily encumber or retard the case development process or to impose unnecessary  
 28

1 expenses and burdens on other parties) expose the Designating Party to sanctions.

2 If it comes to a Designating Party's attention that information or items that it designated  
3 for protection do not qualify for protection, that Designating Party must promptly notify all other  
4 Parties that it is withdrawing the mistaken designation.

5 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order  
6 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,  
7 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so  
8 designated before the material is disclosed or produced.

9 Designation in conformity with this Order requires:

10 (a) for information in documentary form (e.g., paper or electronic documents,  
11 but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing  
12 Party affix the legend "CONFIDENTIAL PER P.O." to each page that contains protected  
13 material. If only a portion or portions of the material on a page qualifies for protection, the  
14 Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate  
15 markings in the margins).

16 A Party or Non-Party that makes original documents or materials available for inspection  
17 need not designate them for protection until after the inspecting Party has indicated which  
18 material it would like copied and produced. During the inspection and before the designation, all  
19 of the material made available for inspection shall be deemed "CONFIDENTIAL PER P.O."  
20 pursuant to this Protective Order. After the inspecting Party has identified the documents it wants  
21 copied and produced, the Producing Party must determine which documents, or portions thereof,  
22 qualify for protection under this Order. Then, before producing the specified documents, the  
23 Producing Party must affix the "CONFIDENTIAL PER P.O." legend to each page that contains  
24 Protected Material. If only a portion or portions of the material on a page qualifies for protection,  
25 the Producing Party also must clearly identify the protected portion(s) (e.g., by making  
26 appropriate markings in the margins).

27 (b) for testimony given in deposition or in other pretrial or trial proceedings,

1 that the Designating Party identify on the record, before the close of the deposition, hearing, or  
 2 other proceeding, all protected testimony. When a deposition, hearing or other proceeding  
 3 includes Protected Material designated by a Non-Party, the Parties shall provide the Designating  
 4 Party with a copy of the transcript and the Designating Party shall have up to 21 days upon  
 5 receipt of the transcript to identify the protected testimony.

6 (c) for information produced in some form other than documentary and for any  
 7 other tangible items, that the Producing Party affix in a prominent place on the exterior of the  
 8 container or containers in which the information or item is stored the legend "CONFIDENTIAL  
 9 PER P.O." If only a portion or portions of the information or item warrant protection, the  
 10 Producing Party, to the extent practicable, shall identify the protected portion(s).

11 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
 12 designate qualified information or items does not, standing alone, waive the Designating Party's  
 13 right to secure protection under this Order for such material. Upon timely correction of a  
 14 designation, the Receiving Party must make reasonable efforts to assure that the material is  
 15 treated in accordance with the provisions of this Order.

## 16 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

17 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of  
 18 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality  
 19 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
 20 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to  
 21 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
 22 original designation is disclosed.

23 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution  
 24 process by providing written notice of each designation it is challenging and describing the basis  
 25 for each challenge. To avoid ambiguity as to whether a challenge has been made, the written  
 26 notice must recite that the challenge to confidentiality is being made in accordance with this  
 27 specific paragraph of the Protective Order. The parties shall attempt to resolve each challenge in  
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1 good faith and must begin the process by conferring directly (in voice to voice dialogue; other  
2 forms of communication are not sufficient) within 14 days of the date of service of notice. In  
3 conferring, the Challenging Party must explain the basis for its belief that the confidentiality  
4 designation was not proper and must give the Designating Party an opportunity to review the  
5 designated material, to reconsider the circumstances, and, if no change in designation is offered,  
6 to explain the basis for the chosen designation. A Challenging Party may proceed to the next  
7 stage of the challenge process only if it has engaged in this meet and confer process first or  
8 establishes that the Designating Party is unwilling to participate in the meet and confer process in  
9 a timely manner.

10 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court  
11 intervention, the Designating Party shall file and serve a motion to retain confidentiality under  
12 Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5 and General Order 62, if  
13 applicable) within 21 days of the initial notice of challenge or within 14 days of the parties  
14 agreeing that the meet and confer process will not resolve their dispute, whichever is earlier. Each  
15 such motion must be accompanied by a competent declaration affirming that the movant has  
16 complied with the meet and confer requirements imposed in the preceding paragraph. Failure by  
17 the Designating Party to make such a motion including the required declaration within 21 days (or  
18 14 days, if applicable) shall automatically waive the confidentiality designation for each  
19 challenged designation. In addition, the Challenging Party may file a motion challenging a  
20 confidentiality designation at any time if there is good cause for doing so, including a challenge to  
21 the designation of a deposition transcript or any portions thereof. Any motion brought pursuant to  
22 this provision must be accompanied by a competent declaration affirming that the movant has  
23 complied with the meet and confer requirements imposed by the preceding paragraph.

24 The burden of persuasion in any such challenge proceeding shall be on the Designating  
25 Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose  
26 unnecessary expenses and burdens on other parties) may expose the Challenging Party to  
27 sanctions. Unless the Designating Party has waived the confidentiality designation by failing to  
28

1 file a motion to retain confidentiality as described above, all parties shall continue to afford the  
 2 material in question the level of protection to which it is entitled under the Producing Party's  
 3 designation until the court rules on the challenge.

4 7. ACCESS TO AND USE OF PROTECTED MATERIAL

5 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or  
 6 produced by another Party or by a Non-Party in connection with this case only for prosecuting,  
 7 defending, or attempting to settle this litigation, or as otherwise provided in this Order. Such  
 8 Protected Material may be disclosed only to the categories of persons and under the conditions  
 9 described in this Order. When the litigation has been terminated, a Receiving Party must comply  
 10 with the provisions of section 13 below (FINAL DISPOSITION).

11 Protected Material must be stored and maintained by a Receiving Party at a location and  
 12 in a secure manner that ensures that access is limited to the persons authorized under this Order.

13 7.2 Disclosure of "CONFIDENTIAL PER P.O." Information or Items. Unless  
 14 otherwise ordered by the court or permitted in writing by the Designating Party or consistent with  
 15 this Order, a Receiving Party may disclose any information or item designated  
 16 "CONFIDENTIAL PER P.O." only to:

17 (a) the Receiving Party's Outside Counsel of Record in this action, as well as  
 18 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the  
 19 information for this litigation;

20 (b) the officers, directors, and employees (including House Counsel) of the  
 21 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have  
 22 signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

23 (c) Experts (as defined in this Order) of the Receiving Party to whom  
 24 disclosure is reasonably necessary for this litigation and who have signed the "Acknowledgment  
 25 and Agreement to Be Bound" that is attached hereto as Exhibit A;

26 (d) the court and its personnel;

27 (e) court reporters and their staff.



(f) professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

(g) during their depositions, witnesses in the action to whom disclosure is reasonably necessary. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material may not be disclosed to anyone except as permitted under this Stipulated Protective Order.

(h) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

### 7.3 Commission "Routine Uses" of Information Designated "CONFIDENTIAL PER P.O."

In addition to, and notwithstanding, the permitted disclosures set forth in 7.2, above, the Commission may make information received available, and may use the information, consistent with the "Routine Uses of Information" set forth in SEC Form 1662 (a copy of which is attached hereto as Exhibit B).

## 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as "CONFIDENTIAL PER P.O.," that Party must:

(a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

If the Designating Party timely seeks a protective order, the Party served with the

1 subpoena or court order shall not produce any information designated in this action as  
 2 "CONFIDENTIAL PER P.O." before a determination by the court from which the subpoena or  
 3 order issued, unless the Party has obtained the Designating Party's permission. The Designating  
 4 Party shall bear the burden and expense of seeking protection in that court of its confidential  
 5 material – and nothing in these provisions should be construed as authorizing or encouraging a  
 6 Receiving Party in this action to disobey a lawful directive from another court.

7 9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS  
 8 LITIGATION

9 (a) The terms of this Order are applicable to information produced by a Non-  
 10 Party in this action and designated as "CONFIDENTIAL PER P.O." Such information produced  
 11 by Non-Parties in connection with this litigation is protected by the remedies and relief provided  
 12 by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from  
 13 seeking additional protections.

14 (b) In the event that a Party is required, by a valid discovery request, to  
 15 produce a Non-Party's confidential information in its possession, and the Party is subject to an  
 16 agreement with the Non-Party not to produce the Non-Party's confidential information, then the  
 17 Party shall:

18 (1) promptly notify in writing the Requesting Party and the Non-Party  
 19 that some or all of the information requested is subject to a confidentiality agreement with a Non-  
 20 Party;

21 (2) promptly provide the Non-Party with a copy of the Stipulated  
 22 Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific  
 23 description of the information requested; and

24 (3) make the information requested available for inspection by the  
 25 Non-Party.

26 (c) If the Non-Party fails to object or seek a protective order from this court within 14  
 27 days of receiving the notice and accompanying information, the Receiving Party may produce the  
 28 Non-Party's confidential information responsive to the discovery request. If the Non-Party timely

1 seeks a protective order, the Receiving Party shall not produce any information in its possession  
 2 or control that is subject to the confidentiality agreement with the Non-Party before a  
 3 determination by the court. Absent a court order to the contrary, the Non-Party shall bear the  
 4 burden and expense of seeking protection in this court of its Protected Material.

#### 5 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

6 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected  
 7 Material to any person or in any circumstance not authorized under this Stipulated Protective  
 8 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the  
 9 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the  
 10 Protected Material, (c) inform the person or persons to whom unauthorized disclosures were  
 11 made of all the terms of this Order, and (d) request such person or persons to execute the  
 12 "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

#### 13 11. MISCELLANEOUS

14 11.1 Right to Further Relief. Nothing in this Order abridges the right of any person to  
 15 seek its modification by the court in the future.

16 11.2 Right to Assert Other Objections. By stipulating to the entry of this Protective  
 17 Order no Party waives any right it otherwise would have to object to disclosing or producing any  
 18 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no  
 19 Party waives any right to object on any ground to use in evidence of any of the material covered  
 20 by this Protective Order.

21 11.3 Filing Protected Material. Without written permission from the Designating Party  
 22 or a court order secured after appropriate notice to all interested persons, a Party may not file in  
 23 the public record in this action any Protected Material. A Party that seeks to file under seal any  
 24 Protected Material must comply with Civil Local Rule 79-5 and General Order 62. Protected  
 25 Material may only be filed under seal pursuant to a court order authorizing the sealing of the  
 26 specific Protected Material at issue. Pursuant to Civil Local Rule 79-5 and General Order 62, a  
 27 sealing order will issue only upon a request establishing that the Protected Material at issue is  
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1 privileged, protectable as a trade secret, or otherwise entitled to protection under the law. If a  
 2 Receiving Party's request to file Protected Material under seal pursuant to Civil Local Rule 79-  
 3 5(d) and General Order 62 is denied by the court, then the Receiving Party may file the  
 4 information in the public record pursuant to Civil Local Rule 79-5(e) unless otherwise instructed  
 5 by the court.

6 12. FINAL DISPOSITION

7 Within 60 days after the final disposition of this action, as defined in paragraph 4, each Receiving  
 8 Party must return all Protected Material to the Producing Party or destroy such material, or  
 9 sequester such material. As used in this subdivision, "all Protected Material" includes all copies,  
 10 abstracts, compilations, summaries, and any other format reproducing or capturing any of the  
 11 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy  
 12 of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,  
 13 correspondence, deposition and trial exhibits, expert reports, attorney work product, and  
 14 consultant and expert work product, even if such materials contain Protected Material. Any such  
 15 archival copies that contain or constitute Protected Material remain subject to this Protective  
 16 Order as set forth in Section 4 (DURATION).

17  
 18 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

19  
 20 Dated: August 30, 2012

21 By: /s/ Sheila E. O'Callaghan  
 22 Attorneys for Plaintiff  
 23 SECURITIES AND EXCHANGE COMMISSION

24  
 25 Dated: August 30, 2012

26 By: /s/ Sarah A. Good  
 27 Attorneys for Defendant  
 28 CHRISTOPHER SELLS

1  
2 Dated: August 30, 2012

3  
4 By: /s/ Elliot R. Peters  
Attorneys for Defendant  
5 TIMOTHY MURAWSKI  
6

7 PURSUANT TO STIPULATION, IT IS SO ORDERED.

8  
9 DATED: August 31, 2012

10 By:   
11

12 United States Magistrate Judge  
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**EXHIBIT A**  
ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of  
 \_\_\_\_\_ [print or type full address], declare under penalty of perjury that I have  
 read in its entirety and understand the Stipulated Protective Order that was issued by the  
 United States District Court for the Northern District of California on \_\_\_\_\_, 2012 in the  
 case of Securities and Exchange Commission v. Sells, Case No. 4:11-cv-04941 CW. I agree  
 to comply with and to be bound by all the terms of this Stipulated Protective Order and I  
 understand and acknowledge that failure to so comply could expose me to sanctions and  
 punishment in the nature of contempt. I solemnly promise that I will not disclose in any  
 manner any information or item that is subject to this Stipulated Protective Order to any  
 person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the  
 Northern District of California for the purpose of enforcing the terms of this Stipulated  
 Protective Order, even if such enforcement proceedings occur after termination of this  
 action.

I hereby appoint \_\_\_\_\_ [print or type full name] of  
 \_\_\_\_\_ [print or type full address and telephone  
 number] as my California agent for service of process in connection with this action or any  
 proceedings related to enforcement of this Stipulated Protective Order.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_



# EXHIBIT B

**SECURITIES AND EXCHANGE COMMISSION**  
**Washington, D.C. 20549**

**Supplemental Information for Persons Requested to Supply  
Information Voluntarily or Directed to Supply Information  
Pursuant to a Commission Subpoena**

**A. False Statements and Documents**

Section 1001 of Title 18 of the United States Code provides as follows:

Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined under this title or imprisoned not more than five years, or both.

**B. Testimony**

If your testimony is taken, you should be aware of the following:

1. *Record.* Your testimony will be transcribed by a reporter. If you desire to go off the record, please indicate this to the Commission employee taking your testimony, who will determine whether to grant your request. The reporter will not go off the record at your, or your counsel's, direction.
2. *Counsel.* You have the right to be accompanied, represented and advised by counsel of your choice. Your counsel may advise you before, during and after your testimony; question you briefly at the conclusion of your testimony to clarify any of the answers you give during testimony; and make summary notes during your testimony solely for your use. If you are accompanied by counsel, you may consult privately.

If you are not accompanied by counsel, please advise the Commission employee taking your testimony if, during the testimony, you desire to be accompanied, represented and advised by counsel. Your testimony will be adjourned once to afford you the opportunity to arrange to be so accompanied, represented or advised.

You may be represented by counsel who also represents other persons involved in the Commission's investigation. This multiple representation, however, presents a potential conflict of interest if one client's interests are or may be adverse to another's. If you are represented by counsel who also represents other persons involved in the investigation, the Commission will assume that you and counsel have discussed and resolved all issues concerning possible conflicts of interest. The choice of counsel, and the responsibility for that choice, is yours.

3. *Transcript Availability.* Rule 6 of the Commission's Rules Relating to Investigations, 17 CFR 203.6, states:

A person who has submitted documentary evidence or testimony in a formal investigative proceeding shall be entitled, upon written request, to procure a copy of his documentary evidence or a transcript of his testimony on payment of the appropriate fees: *Provided, however,* That in a nonpublic formal investigative proceeding the Commission may for good cause deny such request. In any event, any witness, upon proper identification, shall have the right to inspect the official transcript of the witness' own testimony.

If you wish to purchase a copy of the transcript of your testimony, the reporter will provide you with a copy of the appropriate form. Persons requested to supply information voluntarily will be allowed the rights provided by this rule.

4. *Perjury.* Section 1621 of Title 18 of the United States Code provides as follows:

Whoever . . . having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly . . . willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true . . . is guilty of perjury and shall, except as otherwise expressly provided by law, be fined under this title or imprisoned not more than five years or both . . .

5. *Fifth Amendment and Voluntary Testimony.* Information you give may be used against you in any federal, state, local or foreign administrative, civil or criminal proceeding brought by the Commission or any other agency.

You may refuse, in accordance with the rights guaranteed to you by the Fifth Amendment to the Constitution of the United States, to give any information that may tend to incriminate you.

If your testimony is not pursuant to subpoena, your appearance to testify is voluntary, you need not answer any question, and you may leave whenever you wish. Your cooperation is, however, appreciated.

6. *Formal Order Availability.* If the Commission has issued a formal order of investigation, it will be shown to you during your testimony, at your request. If you desire a copy of the formal order, please make your request in writing.

### C. Submissions and Settlements

Rule 5(c) of the Commission's Rules on Informal and Other Procedures, 17 CFR 202.5(c), states:

Persons who become involved in . . . investigations may, on their own initiative, submit a written statement to the Commission setting forth their interests and position in regard to the subject matter of the investigation. Upon request, the staff, in its discretion, may advise such persons of the general nature of the investigation, including the indicated violations as they pertain to them, and the amount of time that may be available for preparing and submitting a statement prior to the presentation of a staff recommendation to the Commission for the commencement of an administrative or injunction proceeding. Submissions by interested persons should be forwarded to the appropriate Division Director or Regional Director with a copy to the staff members conducting the investigation and should be clearly referenced to the specific investigation to which they relate. In the event a recommendation for the commencement of an enforcement proceeding is presented by the staff, any submissions by interested persons will be forwarded to the Commission in conjunction with the staff memorandum.

The staff of the Commission routinely seeks to introduce submissions made pursuant to Rule 5(c) as evidence in Commission enforcement proceedings, when the staff deems appropriate.

Rule 5(f) of the Commission's Rules on Informal and Other Procedures, 17 CFR 202.5(f), states:

In the course of the Commission's investigations, civil lawsuits, and administrative proceedings, the staff, with appropriate authorization, may discuss with persons involved the disposition of such matters by consent, by settlement, or in some other manner. It is the policy of the Commission, however, that the disposition of any such matter may not, expressly or impliedly, extend to any criminal charges that have been, or may be, brought against any such person or any recommendation with respect thereto. Accordingly, any person involved in an enforcement matter before the Commission who consents, or agrees to consent, to any judgment or order does so solely for the purpose of resolving the claims against him in that investigative, civil, or administrative matter and not for the purpose of resolving any criminal charges that have been, or might be, brought against him. This policy reflects the fact that neither the Commission nor its staff has the authority or responsibility for instituting, conducting, settling, or otherwise disposing of criminal proceedings. That authority and responsibility are vested in the Attorney General and representatives of the Department of Justice.

### D. Freedom of Information Act

The Freedom of Information Act, 5 U.S.C. 552 (the "FOIA"), generally provides for disclosure of information to the public. Rule 83 of the Commission's Rules on Information and Requests, 17 CFR 200.83, provides a procedure by which a person can make a written request that information submitted to the Commission not be disclosed under the FOIA. That rule states that no determination as to the validity of such a request will be made until a request for disclosure of the information under the FOIA is received. Accordingly, no response to a request that information not be disclosed under the FOIA is necessary or will be given until a request for disclosure under the FOIA is received. If you desire an acknowledgment of receipt of your written request that information not be disclosed under the FOIA, please provide a duplicate request, together with a stamped, self addressed envelope.

### E. Authority for Solicitation of Information

*Persons Directed to Supply Information Pursuant to Subpoena.* The authority for requiring production of information is set forth in the subpoena. Disclosure of the information to the Commission is mandatory, subject to the valid assertion of any legal right or privilege you might have.

*Persons Requested to Supply Information Voluntarily.* One or more of the following provisions authorizes the Commission to solicit the information requested: Sections 19 and/or 20 of the Securities Act of 1933; Section 21 of the Securities Exchange Act of 1934; Section 321 of the Trust Indenture Act of 1939; Section 42 of the Investment

Company Act of 1940; Section 209 of the Investment Advisers Act of 1940; and 17 CFR 202.5. Disclosure of the requested information to the Commission is voluntary on your part.

#### **F. Effect of Not Supplying Information**

*Persons Directed to Supply Information Pursuant to Subpoena.* If you fail to comply with the subpoena, the Commission may seek a court order requiring you to do so. If such an order is obtained and you thereafter fail to supply the information, you may be subject to civil and/or criminal sanctions for contempt of court. In addition, if the subpoena was issued pursuant to the Securities Exchange Act of 1934, the Investment Company Act of 1940, and/or the Investment Advisers Act of 1940, and if you, without just cause, fail or refuse to attend and testify, or to answer any lawful inquiry, or to produce books, papers, correspondence, memoranda, and other records in compliance with the subpoena, you may be found guilty of a misdemeanor and fined not more than \$1,000 or imprisoned for a term of not more than one year, or both.

*Persons Requested to Supply Information Voluntarily.* There are no direct sanctions and thus no direct effects for failing to provide all or any part of the requested information.

#### **G. Principal Uses of Information**

The Commission's principal purpose in soliciting the information is to gather facts in order to determine whether any person has violated, is violating, or is about to violate any provision of the federal securities laws or rules for which the Commission has enforcement authority, such as rules of securities exchanges and the rules of the Municipal Securities Rulemaking Board. Facts developed may, however, constitute violations of other laws or rules. Information provided may be used in Commission and other agency enforcement proceedings. Unless the Commission or its staff explicitly agrees to the contrary in writing, you should not assume that the Commission or its staff acquiesces in, accedes to, or concurs or agrees with, any position, condition, request, reservation of right, understanding, or any other statement that purports, or may be deemed, to be or to reflect a limitation upon the Commission's receipt, use, disposition, transfer, or retention, in accordance with applicable law, of information provided.

#### **H. Routine Uses of Information**

The Commission often makes its files available to other governmental agencies, particularly United States Attorneys and state prosecutors. There is a likelihood that information supplied by you will be made available to such agencies where appropriate. Whether or not the Commission makes its files available to other governmental agencies is, in general, a confidential matter between the Commission and such other governmental agencies.

Set forth below is a list of the routine uses which may be made of the information furnished.

1. To appropriate agencies, entities, and persons when (a) it is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the SEC has determined that, as a result of the suspected or confirmed compromise, there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the SEC or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the SEC's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.
2. To other federal, state, local, or foreign law enforcement agencies; securities self-regulatory organizations; and foreign financial regulatory authorities to assist in or coordinate regulatory or law enforcement activities with the SEC.
3. To national securities exchanges and national securities associations that are registered with the SEC, the Municipal Securities Rulemaking Board; the Securities Investor Protection Corporation; the Public Company Accounting Oversight Board; the federal banking authorities, including, but not limited to, the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation; state securities regulatory agencies or organizations; or regulatory authorities of a foreign government in connection with their regulatory or enforcement responsibilities.
4. By SEC personnel for purposes of investigating possible violations of, or to conduct investigations authorized by, the federal securities laws.
5. In any proceeding where the federal securities laws are in issue or in which the Commission, or past or present members of its staff, is a party or otherwise involved in an official capacity.
6. In connection with proceedings by the Commission pursuant to Rule 102(e) of its Rules of Practice, 17 CFR 201.102(e).

7. To a bar association, state accountancy board, or other federal, state, local, or foreign licensing or oversight authority; or professional association or self-regulatory authority to the extent that it performs similar functions (including the Public Company Accounting Oversight Board) for investigations or possible disciplinary action.
8. To a federal, state, local, tribal, foreign, or international agency, if necessary to obtain information relevant to the SEC's decision concerning the hiring or retention of an employee; the issuance of a security clearance; the letting of a contract; or the issuance of a license, grant, or other benefit.
9. To a federal, state, local, tribal, foreign, or international agency in response to its request for information concerning the hiring or retention of an employee; the issuance of a security clearance; the reporting of an investigation of an employee; the letting of a contract; or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.
10. To produce summary descriptive statistics and analytical studies, as a data source for management information, in support of the function for which the records are collected and maintained or for related personnel management functions or manpower studies; may also be used to respond to general requests for statistical information (without personal identification of individuals) under the Freedom of Information Act.
11. To any trustee, receiver, master, special counsel, or other individual or entity that is appointed by a court of competent jurisdiction, or as a result of an agreement between the parties in connection with litigation or administrative proceedings involving allegations of violations of the federal securities laws (as defined in section 3(a)(47) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(47)) or pursuant to the Commission's Rules of Practice, 17 CFR 201.100 – 900 or the Commission's Rules of Fair Fund and Disgorgement Plans, 17 CFR 201.1100-1106, or otherwise, where such trustee, receiver, master, special counsel, or other individual or entity is specifically designated to perform particular functions with respect to, or as a result of, the pending action or proceeding or in connection with the administration and enforcement by the Commission of the federal securities laws or the Commission's Rules of Practice or the Rules of Fair Fund and Disgorgement Plans.
12. To any persons during the course of any inquiry, examination, or investigation conducted by the SEC's staff, or in connection with civil litigation, if the staff has reason to believe that the person to whom the record is disclosed may have further information about the matters related therein, and those matters appeared to be relevant at the time to the subject matter of the inquiry.
13. To interns, grantees, experts, contractors, and others who have been engaged by the Commission to assist in the performance of a service related to this system of records and who need access to the records for the purpose of assisting the Commission in the efficient administration of its programs, including by performing clerical, stenographic, or data analysis functions, or by reproduction of records by electronic or other means. Recipients of these records shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.
14. In reports published by the Commission pursuant to authority granted in the federal securities laws (as such term is defined in section 3(a)(47) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(47)), which authority shall include, but not be limited to, section 21(a) of the Securities Exchange Act of 1934, 15 U.S.C. 78u(a)).
15. To members of advisory committees that are created by the Commission or by Congress to render advice and recommendations to the Commission or to Congress, to be used solely in connection with their official designated functions.
16. To any person who is or has agreed to be subject to the Commission's Rules of Conduct, 17 CFR 200.735-1 to 200.735-18, and who assists in the investigation by the Commission of possible violations of the federal securities laws (as such term is defined in section 3(a)(47) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(47)), in the preparation or conduct of enforcement actions brought by the Commission for such violations, or otherwise in connection with the Commission's enforcement or regulatory functions under the federal securities laws.
17. To a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.
18. To members of Congress, the press, and the public in response to inquiries relating to particular Registrants and their activities, and other matters under the Commission's jurisdiction.
19. To prepare and publish information relating to violations of the federal securities laws as provided in 15 U.S.C. 78c(a)(47)), as amended.
20. To respond to subpoenas in any litigation or other proceeding.



21. To a trustee in bankruptcy.

22. To any governmental agency, governmental or private collection agent, consumer reporting agency or commercial reporting agency, governmental or private employer of a debtor, or any other person, for collection, including collection by administrative offset, federal salary offset, tax refund offset, or administrative wage garnishment, of amounts owed as a result of Commission civil or administrative proceedings.

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*Small Business Owners:* The SEC always welcomes comments on how it can better assist small businesses. If you have comments about the SEC's enforcement of the securities laws, please contact the Office of Chief Counsel in the SEC's Division of Enforcement at 202-551-4933 or the SEC's Small Business Ombudsman at 202-551-3460. If you would prefer to comment to someone outside of the SEC, you can contact the Small Business Regulatory Enforcement Ombudsman at <http://www.sba.gov/ombudsman> or toll free at 888-REG-FAIR. The Ombudsman's office receives comments from small businesses and annually evaluates federal agency enforcement activities for their responsiveness to the special needs of small business.